

DEVELOPER PARTICIPATION CONTRACT

THIS CONTRACT FOR DEVELOPER PARTICIPATION ("Contract") is made on the
Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal
corporation and home-rule city of the State of Texas principally situated in Harris County, acting by
and through its governing body, the City Council and _____
("Developer"), a _____
doing business in the State of Texas.

The initial addresses of the parties, which one party may change by giving written notice of
its changed address to the other party, are as follows:

<u>City</u>	<u>Developer</u>
Director of Department of Public Works and Engineering or Designee City of Houston P.O. Box 1562 Houston, Texas 77251	_____ _____ _____ _____
Director of Department of Housing and Community Development Attn: Assistant Director of Economic Development/Investments City of Houston 601 Sawyer, 4 th Floor Houston, Texas 77007	

PREAMBLE

WITNESSETH:

WHEREAS, the Developer intends to develop a tract located within the municipal boundaries of the City; and

WHEREAS, the Developer has paid all impact fees required by the City for such development for _____; and

WHEREAS, it is necessary to construct the project described in Exhibit "A" (the "Project"); and

WHEREAS, the City has agreed to participate in the cost of the Project in an amount not to exceed _____;

NOW, THEREFORE, the City and the Developer hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

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Exhibit “A”: Description of Project

Exhibit “B”: Request for Reimbursement of Eligible Storm Drainage Costs

All of the above described sections and exhibits are hereby incorporated into this Contract by this reference for all purposes.

IN WITNESS HEREOF, the City and the Developer have made and executed this Participation Contract in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

"Developer"

By: _____

Name:

Title:

By: _____

Name:

Title:

Tax Identification No. _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Department of Public
Works and Engineering

City Controller

Director, Department of Housing
and Community Development

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No.

I. DEFINITIONS

"City" is identified in the Preamble and includes its successors and assigns.

"Closing" is described in Article III.

"Code of Ordinances" is the City of Houston Code of Ordinances.

"Construction Date" is described in Article IVA.

"Detention Facility Allocation" means the total cost of a Detention Facility constructed pursuant to a Developer Participation Agreement under §47-164 of the Code of Ordinances divided by the total number of lots projected by the Developer to be served by such facility, regardless of whether the lots were or will be developed in conjunction with this Contract.

"Developer" is identified in the Preamble and is the owner of the Property identified in Exhibit "A". Developer also includes any successor in title to any portion of the Property, except to Retail Purchaser, but any Developer that is not an assignee of this Participation Contract is subject only to the agreement required under Subsection II D (3) below.

"Director of HCD" means the Director of Housing and Community Development or such other person as he or she may designate by notice to the Developer to administer this Contract.

"Director of PW&E" means the Director of Public Works and Engineering or such person as he and she may designate for the purpose of administering this Contract.

"Eligible Construction Costs" means the full cost of materials, labor and related testing necessary for construction of the Main, as well as cost of construction management performed by independent contractors of Developer and the actual costs of publishing notice of bids for construction of the Project in accordance with Local Government Code Section 252.041 or any

successor statute, but excludes all costs of lift stations and applicable permits of all kinds, which shall not be reimbursed by the City under this Contract.

"Eligible Costs" means Eligible Design, Construction, Over Sizing, and where applicable, Storm Drainage Costs.

"Eligible Design Costs" means the full cost of survey, design, and related testing services necessary for the Main, which services are performed by independent contractors to the Developer, but excludes the cost of applicable permits of all kinds, which shall not be reimbursed by the City under this Contract.

"Eligible Over Sizing Costs" means the actual incremental costs of design and construction of Main sized at the request of the Director in excess of the capacity necessary for the residential units to be served by the Project.

"Eligible Storm Sewer Drainage Costs" means, for new low or moderate cost single family homes only, the actual cost, not to exceed \$3,000 per lot including allowable interest, of design, testing, and construction of storm sewer drainage for each lot. It includes either (a) the Detention Facility Allocation for each lot or (b) the portion of any required flood control impact fee attributable to such lot. The cost of applicable permits of all kinds is excluded from Eligible Storm Sewer Drainage Costs and will not be reimbursed under this Contract.

"Interest Rate" means 5.1 %.

"Low or Moderate Cost" has the meaning set out in Section 47-164 (3) of the City of Houston Code of Ordinances.

“Main” means water and wastewater facilities eligible for reimbursement under Section 47-164 of the Code of Ordinances.

"Participation Contract" means this contract.

"Project" is defined in Exhibit “A”.

“Property” is the land described in Exhibit “A”.

“Related Entity” means, with respect to any party which has been an Developer hereunder:

- (i) any spouse, parent, child, grandchild, brother or sister of such Developer; or (ii) any person or entity (A) that directly or indirectly controls or is controlled by or is under common control with such Developer, (B) that is an officer of, partner in or trustee of, or serves in a similar capacity with respect to, such Developer or of which such Developer is an officer, partner or trustee, or with respect to which such Developer serves in a similar capacity, or (C) that is the beneficial owner, directly or indirectly, of 10% or more of any class of equity securities of such Developer or of which such Developer is directly or indirectly the owner of 10% or more of any class of equity securities.

“Retail Purchaser” is a fee title purchaser of one Single Family Residence within the Property, who actually resides at the Single Family Residence.

"Single Family Residence" has the meaning set out in Section 42-1 of the City of Houston Code of Ordinances.

II. DUTIES OF DEVELOPER

A. Water, Wastewater, and Storm Sewer Capacity; Preliminary Plat

Before executing this contract, Developer shall (i) obtain all necessary water and wastewater and storm drainage capacity for the Project as required by the Director of PW&E and (ii) obtain conditional City approval of a preliminary plat and (iii) submit to the Director of PW&E basic engineering drawings showing the location of the water, wastewater, and if applicable, storm sewer lines. If applying for Eligible Storm Sewer Drainage Costs, Developer shall furnish the Director of HCD with pre-qualifying information requested by the HCD Director.

B. Construction of the Project

(1) Developer shall provide all engineering required for construction of the Project. Before the Project may be advertised for bids, Developer must submit to Director of PW&E and obtain his or her approval of:

- (a) all plans and drawings. Any change made by Developer to the final plans must be approved by the Director of PW&E, and
- (b) a copy of Developer's contract with its engineer or construction manager verifying that the engineer or construction manager has agreed to perform all duties of the City Engineer in the construction contract.

(2) Developer shall acquire all lands and rights-of-way necessary to construct the Project. Developer shall coordinate with the City and other utilities to minimize the possibility of damage to utilities in the Project area. Upon completion of the Project, Developer shall ensure that the Project

is free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests.

(3) Developer shall prepare bidding documents and the form of the construction contract, which must be submitted to the Director of PW& E and approved by the City Attorney. The contract must include the City's standard construction contract requirements, as required in the Code of Ordinances, for bid bonds, Conflict of Interest by City Employees, Minority and Women Business Enterprises, Equal Employment Opportunity, Prevailing Wages, and Drug-Policy Compliance. Developer shall also assist the City in the bidding of the Project by conducting the pre-bid conference, drafting the Notice to Bidders, preparing copies of bidding documents for distribution to the bidders, paying the cost of advertising the bids, and filing copies of documents with the City Secretary as necessary.

(4) The City Secretary shall open and read all bids for construction of the Project as in the case of any other City construction project. In the event that the lowest responsible bid for construction of the Project is in an amount that would result in the actual Eligible Costs exceeding the Appropriated Funds as set out in Section III B of this Contract, Developer shall have the following options:

- (a) Developer may elect to pay the additional costs without reimbursement by the City, in which case the City shall award the construction contract and assign it to Developer to proceed with construction of the Project.
- (b) Developer may instruct the Director of PW&E to reject all bids without awarding the construction contract and may terminate this Contract without

further obligation, including any obligation of the City to reimburse design costs, to either party.

- (c) Developer may negotiate with the City to appropriate additional funds for the Project or to modify the design of the Project. The City may, but has no obligation to, appropriate additional funds for the construction of the Project.

Developer shall provide the Director of PW&E with proof that it has secured financing for the Project prior to the City's bidding of the Project. This proof may be in the form of a set-aside letter from a bank stating that it will loan Developer the amount of money needed to construct the Project, a letter of credit for the entire amount of the Project cost, an escrow account in an amount equal to the Project cost, or in any other form approved by the Director of PW&E.

Developer shall provide proof to the Director of PW&E that it has filed its subdivision or development plat with the appropriate county clerk before the City awards the Project construction contract.

- (5) At the time of the City's award of the construction contract, the Developer shall execute in its own name approval of the assignment of the construction contract from the City.

DEVELOPER AGREES TO RELEASE AND HOLD HARMLESS THE CITY ON ACCOUNT OF ANY NEGLIGENCE OR FAULT OF THE CONSTRUCTION CONTRACTOR FOR THE PROJECT, AGREEING TO LOOK ONLY AT THE CONSTRUCTION CONTRACTOR AND ITS SURETY IN CASE OF DEFAULT OR COST OVERRUNS.

- (6) At the time Developer believes that construction of the Project is completed, it shall notify the Director of PW&E that it is ready for inspection of the Project by the Director of PW&E. The Project shall not be considered complete and shall not be connected to the City's utility system until the Director of PW&E issues a certificate of final completion.
- (7) The Project shall be commenced and completed by the Developer in the time periods required by Section 47-164 of the City Code of Ordinances. The Director of PW&E may grant a time extension not to exceed 60 days if the Project is delayed by the City or by a *force majeure*.

C. INDEMNIFICATION

DEVELOPER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE DEVELOPER (INCLUDING DEVELOPER'S CONTRACTORS AND SUBCONTRACTORS) IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS PARTICIPATION CONTRACT. DEVELOPER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD

HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND DEVELOPER (INCLUDING DEVELOPER'S CONTRACTORS AND SUBCONTRACTORS) ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER DEVELOPER IS IMMUNE FROM LIABILITY OR NOT, FOR A PERIOD OF UP TO 4 YEARS AFTER THE DATE OF CLOSING.

IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN CONTRACT BY THE DEVELOPER TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE DEVELOPER.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE DEVELOPER UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$1,000,000 PER OCCURRENCE.

D. Sale of Property

Developer shall convey the Property or portions thereof only as follows:

- (1) To Retail Purchasers by fee simple deed;
- (2) To a natural person by a qualified lease. A qualified lease is any rental, lease, lease-purchase or other financial arrangement that does not convey title to the person, but only if such qualified lease is authorized by a City approved lease-purchase program; or
- (3) To a purchaser who agrees in writing:
 - a. To construct only Single Family Residences on the single family residential lots covered by this Participation Contract;
 - b. To abide by the requirements of this Subsection II D; and
 - c. That the City as a third-party beneficiary may enforce the provisions of this Section II D in the event the purchaser violates any of such provisions.

(In the event the Developer and purchaser desire to obtain an assignment of the Participation Agreement, such Developer and purchaser must obtain the written approval of the assignment from both the Director of PW & E and the Director of HCD.)

The Director of PW& E and the Director of HCD shall monitor Developer's development and sale of the Property for compliance with the Participation Contract, including this Section II D.

E. Compliance with Laws

Developer shall comply with all applicable state and federal laws and regulations as well as all provisions of the City of Houston Charter and Code of Ordinances, including all applicable provisions of Chapter 47 of the Houston Code of Ordinances.

III. DUTIES OF CITY

A. Payment by City

After completion of the Project and upon inspection and certification by the Director of PW&E that construction of at least 25 percent of the housing to be served by the Project has been completed, the Director of PW&E shall schedule the closing for payment to the Developer ("Closing") at a time and place convenient to the parties.

At least 30 days before the date of Closing, Developer shall provide the Director of PW&E:

- (1) An accounting of all Eligible Costs, including records and vouchers for all payments made by the Developer for Eligible Costs. Developer shall provide all documentation of Eligible Costs as required by the Director of PW&E.
- (2) A certified copy of the subdivision or development plat and all documents necessary and required by the City Attorney to vest title to the Project in the City free and clear of any encumbrances.
- (3) Record drawings of the Project.
- (4) Affidavit of payment to subcontractors and material suppliers.
- (5) Certification of final completion of the Project.
- (6) Certification that construction is completed on at least 25 percent of the houses to be served by the Project.

- (7) Certification that the Developer has complied with the requirements of Section II D, Sale of Property.

Within 30 days after Developer completes the closing requirements, subject to the Limitation of Appropriation set out in Section B below, the City shall pay as follows:

The Sum of:

- (a) 70 percent of the Eligible Construction Costs for the Main,
- (b) 100 percent of the Eligible Over Sizing Costs for the Main not already reimbursed under (a),
- (c) 100 percent of the Eligible Design Costs,
- (d) Interest on the reimbursement cost as calculated above at the interest rate described in Article I of this Contract for the period of time between the Developer's loan disbursement and payment by the City.

For Projects serving single family housing that is sold at low or moderate cost as defined in Section 47-164 of the Code of Ordinances only, the City shall pay Developer, in addition to the above costs, Eligible Storm Sewer Drainage Costs (including the Detention Facility Allocation as set out in Section IV A and interest calculated at the rate set out in Article I from the date of loan disbursement up to the Date of Closing only) up to a maximum amount of \$3,000 per lot, upon proof furnished to the Director of HCD that lot and housing unit have been sold for low or moderate cost and that the Developer has complied with Section II D, Sale of Property. The City shall pay Eligible Storm Sewer Drainage Costs during the period beginning with the date of Closing and ending on the third anniversary of the Construction Date ("the Storm Sewer Reimbursement Period"). In order to

receive payment of such costs, the Developer shall submit to the Director of HCD a "Request for Reimbursement of Eligible Storm Drainage Costs" in the form set out in Exhibit "B" in accordance with procedures and including documentation to be established by the Director of HCD. The City shall not pay and Developer shall not be entitled to receive reimbursement for Eligible Storm Sewer Drainage Costs for any lots sold after the Storm Sewer Reimbursement Period expires, except as provided for the Detention Facility Allocation in Section IV A (3). The City shall never be obligated to pay Developer any amount in excess of the Allocated Funds set out for Eligible Storm Sewer Drainage Costs regardless of the number of homes sold.

B. Limit of Appropriation

(1) The City's duty to pay money to Developer under this Contract is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated (a) the sum of \$_____ to pay money due for Eligible Design, Construction, and Over Sizing Costs, including interest, and (b) the sum of \$_____ to pay for Eligible Storm Sewer Drainage Costs, including interest, under this Contract (the "Appropriation Funds"). The City Council of the City, in its discretion, may appropriate additional funding for this Contract, but it is not obligated to do so. If the Appropriated Funds are insufficient to reimburse the Developer in accordance with the formulas described above, the Developer's only remedies as those described in Section II B (4) above.

IV. TERM AND TERMINATION

A. This Contract is effective on the date of countersignature by the City Controller and shall remain in effect for the combination of the following terms:

- (1) From the Effective Date until the actual date on which Developer issues a Notice to Proceed with construction of the Project ("Construction Date"), which term shall not exceed 18 months, and
- (2) If the Closing Date is 3 years or less after the Construction Date, then until the City has reimbursed Developer for Eligible Design, Construction, and Over Sizing Costs.

FAILURE OF THE DEVELOPER TO COMPLETE PERFORMANCE OF ITS APPLICABLE OBLIGATIONS UNDER THIS CONTRACT WITHIN EITHER OF THE TIME PERIODS SET OUT ABOVE SHALL CONSTITUTE A DEFAULT OF THIS CONTRACT BY DEVELOPER AND SHALL TERMINATE THE CITY'S DUTY TO REIMBURSE DEVELOPER FOR ANY ELIGIBLE COSTS HEREUNDER OR FOR ANY COSTS WHATSOEVER AND SHALL CONSTITUTE A WAIVER BY DEVELOPER OF ANY RIGHT TO CLAIM SUCH REIMBURSEMENT OR ANY OTHER COSTS OR DAMAGES ARISING OUT OF THE CONTRACT OR THE DESIGN AND CONSTRUCTION OF THE PROJECT. DEVELOPER'S FAILURE TO COMPLETE ITS OBLIGATIONS TIMELY AS SET OUT ABOVE SHALL NOT REQUIRE THE CITY TO GIVE NOTICE OF

DEFAULT AS DESCRIBED BELOW OR TO GIVE DEVELOPER ANY TIME TO CURE.

(3) For Projects serving low or moderate cost single family housing only, from the Closing Date through the end of the Storm Sewer Reimbursement Period, as set out in III A above. Developer shall not be entitled to reimbursement for any Eligible Storm Sewer Drainage Costs if it fails to meet either of the deadlines in (1) and (2) above. Developer shall not be entitled to receive reimbursement for Eligible Storm Sewer Drainage Costs on any lot not built on and sold at low or moderate cost within the time period specified in this section.

Notwithstanding the foregoing, however, the City shall reimburse the Developer for the Detention Facility Allocation for eligible lots with homes sold for low or moderate cost even if the Detention Facility itself was constructed under a previous Developer Participation Contract. The amount of interest payable on any Detention Facility Allocation shall never exceed the amount of interest payable on the Detention Facility Allocation pursuant to the Developer Participation Contract under which the Detention Facility was constructed.

B. For any other reason except Developer's failure to complete its obligations timely, either party may terminate its performance under this Contract in the event of default by the other party and a failure by that party to cure such default after receiving notice thereof, all as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Participation Contract. Should such a default occur, the injured party shall deliver a written notice to

the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 30th day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Participation Contract as of such date. The Director may give such notice for the purposes of this Contract.

If the default is for a violation of Section II D, among other remedies available to the City, the City may recover from the Developer all money paid to the Developer under this Participant Contract and/or debar the Developer and Related Entities from Participation Contracts.

V. MISCELLANEOUS

A. Independent Contractor

Developer is engaged as an independent contractor, and Developer shall accomplish all of the services provided for herein in such capacity. The City of Houston shall have no control or supervisory powers as to the detailed manner or method of the Developer's performance of the subject matter of this Participation Contract. All personnel supplied or used by Developer shall be deemed employees or subcontractors of Developer and shall not be considered employees, agents or subcontractors of the City of Houston for any purpose whatsoever. Developer shall be solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

B. Force Majeure

"Force Majeure" includes, but is not limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, and any other inabilities of either party to carry out its obligations under this Participation Contract, except strikes or labor disputes and breakage or damage to machinery or equipment, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, and which by the exercise of due diligence and care such party could not have avoided.

If, because of Force Majeure any party hereto is rendered unable, wholly or in part, to carry out its obligations under this Participation Contract, then such party shall give to the other party prompt written notice of the Force Majeure with reasonable full details concerning it; thereupon the obligation of the party given the notice, so far as they are affected by the Force Majeure, shall be suspended during, but no longer than, the continuance of the Force Majeure. The affected party shall use all possible diligence to remove the Force Majeure as quickly as possible, but his obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the party involved.

C. Severability

In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either the Developer or the City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

D. Entire Agreement

This Participation Contract merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are not other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the Project, whether written or verbal, antecedent or contemporaneous with the execution hereof.

E. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Participation Contract or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

F. Acceptance and Approval

An approval by a Director, or by any other instrumentality of the City, of any part of Developer's performance shall not be construed to waive compliance with this Participation Contract or to establish a standard of performance other than required by this Participation Contract or by law. A Director is not authorized to vary the terms of this Participation Contract.

G. Inspections and Audits

Representatives of the City shall have the right to perform, or cause to be performed, (1) audits of the books and records of the Developer relating to the Project, and (2) inspections of all places where work is undertaken in connection with the Project. The Developer shall be required to keep such books and records available for such purpose for at least three (3) years after the

ceasing of its performance under this Participation Contract. Nothing in this provision shall affect the time for bringing a cause of neither action nor the applicable statute of limitations.

H. Enforcement

The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Participation Contract without further authorization. Developer covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Developer's compliance with this Participation Contract, with the exception of those documents made confidential by federal or State law or regulation.

I. Risk of Loss

Risk of loss or damage to the Project shall pass from the Developer to the City upon closing.

J. Non-Waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

K. Business Structure and Assignments

The Developer shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the prior written consent of both Directors. If the Developer desires approval of an assignment, the Developer shall immediately furnish both Directors:

- (1) proof of the assignment and the name, telephone number, and address of the

- Assignee and a clear identification of the fees to be paid to the Assignee;
- (2) an original Affidavit of Ownership and Control of the Assignee; and
 - (3) all pre-qualifying information requested by the HCD Director.

The Developer shall not delegate any portion of its performance under this Contract without obtaining prior written consent from both Directors.

Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. Provided, however, the Developer must provide the Directors the information described in item (1) above.

L. Survival

Developer shall remain obligated to the City under all clauses of this Participation Contract that expressly or by their nature extend beyond the expiration or termination of this Participation Contract, including Sections II C (Indemnity) and II D (Sale of Property).

M. Developer Debt

IF DEVELOPER, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT DEVELOPER HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY DEVELOPER IN WRITING. IF DEVELOPER DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER

SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT
EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO DEVELOPER UNDER THIS
AGREEMENT, AND DEVELOPER WAIVES ANY RECOURSE THEREFOR.